BRITISH COLUMBIA

MOTOR CARRIER COMMISSION

Annual Report of the Motor Carrier Commission

1999/2000

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ANNUAL REPORT OF THE MOTOR CARRIER COMMISSION

60th Annual Report
Covering the Licence Year Ended
February 29, 2000

Pursuant to Section 37
Of the Motor Carrier Act

Victoria, British Columbia

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October 27, 2000

To His Honour the Lieutenant Governor in Council
of the Province of British Columbia

MAY IT PLEASE YOUR HONOUR:

Sir: I respectfully transmit herewith the 60th Annual Report, pursuant to the provisions of section 37 of the *Motor Carrier Act*, covering the licence-year ended February 29, 2000.

Claude G. Heywood, Chair

GENERAL REMARKS

The *Motor Carrier Act* (the Act) was initially administered by the Public Utilities Commission from 1939 until the Motor Carrier Commission (the Commission) was created in July 1973. The *Act* authorizes the Commission to regulate and licence motor carriers that are in the business of transporting goods or persons by motor vehicle on British Columbia highways. The Commission also regulates and licences extra-provincial carriers while operating in British Columbia under authority delegated from the Government of Canada and the *Motor Vehicle Transport Act*, 1987.

The Commission has a duty to regulate motor carriers with the following objectives:

- Promote adequate and efficient service and reasonable and just charges for it,
- Promote safety on the public highways, and
- Foster sound economic conditions in the transportation business in British Columbia.

The Commission may make investigations, inquiries, regulations and orders it thinks necessary to carry out its duties.

The Motor Carrier Commission consists of not less than seven persons appointed by the Lieutenant Governor in Council. Commission members at the beginning of the 1999/2000 licence year (March 1, 1999 to February 29, 2000) were: Claude G. Heywood, Chair, and Ranjiet Bhimji, Vicki Farrally, Maria F. Giardini, John E. Hooper, Peter Knittel, Mary Martin, Robert W. Martin, Barrie Sanford, Paul Starek, and Gail Davidson. On June 16, 1999, Maria F. Giardini submitted her resignation as a Commissioner.

COMMISSIONERS AND STAFFING

The Commission functioned with three full-time staff working out of its office in Victoria: Director and Secretary to the Commission, Registrar and the Research and Administrative Coordinator. The Commission also utilizes the services of a part-time Special Assistant to the Chair who works out of an office adjacent to the Motor Carrier Department office in Burnaby.

During that year, Colin Hanson, Director and Secretary accepted another public service position after many years of exemplary service to the Commission. Jan Rossley ably fulfilled this position on a temporary six-month basis while the Commission recruited a permanent replacement. Jan Broocke assumed the role of Director and Secretary in October 1999. Lisa James is the Registrar for the Commission as well as the Acting Registrar for the Reconsideration Panel. Sharlene Ferguson is the Research and Administrative Coordinator. Mert Rowden is the Special Assistant to the Chair and provides technical expertise and experience in motor carrier matters to the Commission. Commission staff provide invaluable support to the Commission and Commissioners.

The Commission has received approval to fill a new full-time policy coordinator position to help it enhance the effectiveness of its policy-making, adjudicative and communications functions. The recruitment process is underway.

FREIGHT DEREGULATION

As of January 1, 2000, British Columbia's *Motor Carrier Act* was amended to exclude the transportation of goods. This amendment represented the completion of the federal government's policy of economic deregulation of the freight transportation industry by repealing Part 3 of Canada's *Motor Vehicle Transport Act, 1987.*

In response to the Federal changes, British Columbia deregulated its intra-provincial general freight industry in late 1997. Economic deregulation of intra-provincial raw log and gravel haulers in British Columbia marked the final stage of the provincial response to federal deregulation of the freight industry.

Truck safety, including National Safety Code matters, vehicle inspections and other operating requirements, now fall under the jurisdiction of the Insurance Corporation of British Columbia. The Commission continues to regulate and licence commercial passenger transportation operations.

STRATEGIC DEVELOPMENTS

Release of "A Study of the Taxi Industry in British Columbia"

In December 1998, the Minister of Transportation and Highways appointed a Taxi Study Panel headed by Stan Lanyon, Q.C., to study and report on the state of the taxi industry in British Columbia. The final report titled, "*A Study of the Taxi Industry in British Columbia*" (the Lanyon report), was submitted to the Minister on June 15, 1999. The report contained 56 recommendations, of which approximately 40 related to the mandate of the Commission.

In response to the Lanyon report, the Ministry of Transportation and Highways established a Taxi Interim Advisory Committee (TIAC), which included representation from the Commission, to conduct follow-up consultation work with key stakeholders. TIAC met three times over the Summer and Fall of 1999 and prioritized the Lanyon recommendations, made recommendations on legislative changes and approved a Discussion Paper on Training and Issues for People with Disabilities.

Recommendation #17 of the Lanyon report called for the establishment of a Taxi Advisory Committee to work with the Commission on matters of policy and planning. The report also recommended that such a committee should have representation from industry, regulatory bodies, municipalities, regional districts and other stakeholders. In

February 2000, the Commission consulted with industry and others regarding the establishment of this Committee. A tentative meeting date was set for April 2000.

Commission Revitalization

In 1999, the Motor Carrier Commission undertook a revitalization initiative. This revitalization will modernize the Commission's approach to regulation. Its overarching goal is to provide more effective, streamlined and efficient services. Revitalization priorities for the 2000/2001 licensing year are to:

- Identify and articulate strategic directions and policies,
- Increase consultation with industry, including establishing industry advisory committees,
- Consolidate and articulate policies and procedures and making these accessible to the public,
- Create public information products available regarding Commission policies and practices, and
- Streamline the regulatory framework, where possible.

OPERATIONS

The Motor Carrier Department (the Department) of the Insurance Corporation of British Columbia (ICBC), located at 4240 Manor Street, Burnaby, British Columbia, continues to be the operational arm of the Commission. The Department receives all applications for motor carrier authority, tariffs and time schedules. The Department investigates each application and prepares a report for the Commission. The Department implements all decisions made by the Commission respecting applications, issues licence documentation and collects revenue. It also undertakes compliance and enforcement activities and maintains a liaison with other agencies who participate in enforcement of the *Motor Carrier Act*.

In September 1999, the Commission and ICBC signed a Memorandum of Understanding (MOU) which formalizes ICBC's agreement to provide compliance, licensing and administrative services to the Commission. These services—delivered by the Department—assist the Commission in carrying out its statutory mandate to regulate and licence motor carriers such as taxis, limousines and buses according to objectives set out in the *Motor Carrier Act*. The MOU also sets out a process and timelines for the two parties to develop Standards of Service Delivery. A joint committee has begun developing these Standards.

In January 2000, the Motor Carrier Commission moved its office from #200 – 703 Broughton Street office in Victoria to more economical premises in 4C, 940 Blanshard Street. This move will enable the Commission to direct more of its budget to operational matters.

APPLICATIONS

The total number of applications filed with the Commission during this licence year was 371. This represents an 86 % decrease over the previous year that is largely due to the continued deregulation of freight. Of the total number of applications, 210 (57%) were for one or more additional vehicles for existing carriers. The remaining 161 were for new authority, alterations to existing authority, or transfers of authority.

LICENSED CARRIERS

The number of licensed carriers decreased from 11,210 to 791. This significant decrease is primarily due to the economic deregulation of the freight transportation industry. As well, the Commission cancelled 53 licences of persons or companies who had ceased operations. The following chart summarizes the number of vehicle licence certificates issued for the past four licence years:

Annual Number of Vehicle Certificates (New and Renewed)

Licence Type	1999/2000	1998/1999	1997/1998	1996/1997
Buses	2,496	2,517	2,112	1,968
Taxis/Limos	2,525	2,301	2,253	2,454
Public Freight	--	51,663	46,210	47,828
Limited Freight	--	6,271	6,034	2,517
TOTAL	5,021*	62,752	56,609	54,767

**Freight statistics are unavailable as freight carriers were exempt from the requirement to renew certificates and decals for the 1999/2000 licensing year. This exemption enabled British Columbia carriers to adjust to a deregulated environment and gain a competitive position before the completion of national economic deregulation of freight on January 1, 2000.*

The following chart provides a breakdown of the type of transportation operations conducted by licensed motor carriers for the past four years:

Annual Number of Licensees By Type of Operation

Licence Type	1999/2000	1998/1999	1997/1998	1996/1997
Buses	499	466	434	439
Taxis/Limos	292	305	300	310
Intraprov. Freight	2,259	2,092	1,657	1,578
Dump Trucks	1,967	1,959	2,076	2,058
Logs	1,544	1,529	1,605	1,642
Extraprov. Freight	4,649	4,116	3,997	3,958
TOTAL	11,210	10,467	10,069	9,985

LICENSING PROCESS

The Motor Carrier Commission improved on progress made in the previous licence year to address long-standing expressions of concern over the timeliness of decision-making. Progress is partly due to new initiatives to expedite applications, investigations and decision-making processes, and partly due to the completion of the deregulation of freight carriers and resulting decreases in work volumes. Specific initiatives taken by the Commission included the implementation of administrative application reviews to enable quick approval of simple and non-controversial applications. This enabled the Commission to reach a decision on most new applications within 45 days of accepting a completed application.

REVENUE

A total of $1,122,268 was paid into General Revenue for the 1999/2000 licence year, an amount $2,239,422 less than that earned in the previous year. This reduction in revenue is due to the deregulation of the freight transportation industry which was completed by the end of the 1999 calendar year. The 1999/2000 total is broken down as follows:

1999/2000 Revenues by Type of Fee

Licensing Fees	$561,250
Filing Fees	74,200
Temporary Permits	34,425
Replacements	10,050
Miscellaneous*	442,243
Total	$1,122,168

**Includes extra-provincial and regional permits, funds not yet assigned, hearing fees and other miscellaneous fees.*

Annual Revenue By Type of Licence

Licence Type	1999/2000	1998/1999	1997/1998	1996/1997
Buses	249,600	$207,924	$325,443	$272,430
Taxis/Limos	252,500	132,315	195,266	204,322
Freight*	59,150	1,549,977	5,988,155	6,333,992
Permits	34,425	44,970	75,245	463,935
Miscellaneous**	526,493	1,426,504	1,480,355	575,739
TOTAL	$1,122,168	$3,361,690	$8,064,460	$7,850,418

* *Includes both public and limited freight*

** *Includes filing revenues*

PUBLIC HEARINGS

The Commission conducted 14 public hearings during the licence year. Most were heard in Burnaby, but others were scheduled throughout the province, including Duncan, Grand Forks, Kamloops, Kelowna, Parksville, Victoria and Williams Lake. Public hearings conducted for the 1999/2000 licence year are summarized below according to the type of hearing:

Applications for licence authority	4
Review Hearings	2
Show Cause Hearings	1
Reconsideration Panel	7
Total	14

ORDERS

The Commission issued a total of 35 Orders during the licence year. Orders issued by the Commission outline the nature of the application, or the issues before the Commission and the decision reached in each particular case. The Orders are summarized below:

Commission Orders	9
Reconsideration Panel:	
Application for Leave Orders	15
Reconsideration Orders	11
Total Orders	35

Selected Commission Orders are provided in Appendix A, and selected Reconsideration Panel Orders are provided in Appendix B.

ENFORCEMENT

The Commission has several avenues at its disposal to promote compliance with the *Motor Carrier Act* and regulations. These include warnings, pecuniary penalties, suspensions and cancellation of licences.

The enforcement of the licensing provisions of the Act and regulations is conducted by the Royal Canadian Mounted Police (RCMP), various municipal police forces, weighmasters, regional compliance inspectors, and motor carrier inspectors from ICBC. In cooperation with other agencies, the Department participates in various compliance activities, including road checks, investigation of complaints, and random audits of the records of licensing motor carriers. Trucks, buses, and taxis are examined at road checks for mechanical fitness, proper licensing and correct documentation.

COMPLAINTS

The Department investigates complaints made by the public or public agencies. During the 1999/2000 licence year, the Department handled 166 complaint files, an increase from 67 in the previous year. This significant change is in part due to greater public awareness (such as the 'Grad Limo Alert') and greater self-policing among licensees, particularly with regard to compliance with the conditions of licence. Depending upon the seriousness of a complaint and the results of an investigation, the Department may recommend remedial action to be undertaken by the Commission.

SAFETY

All vehicles licensed under the *Motor Carrier Act* must have a National Safety Code certificate and satisfy the safety requirements under the Commercial Vehicle Inspection Program. Hearings continue to be scheduled which require carriers to show cause why their licence should not be cancelled for failure to properly maintain their vehicles and supervise their drivers.

RATE AND TIME SCHEDULES

Licensed freight and passenger motor carriers must file with the Commission a schedule of rates charged to the public for their transportation services (often referred to as a "tariff"). Carriers must maintain their schedule of rates once accepted by the Commission and must not vary them without the consent of the Commission.

Carriers who are licensed to provide a scheduled bus service must file time schedules showing the times of departure and arrival from various terminals along their routes. These carriers must maintain those schedules once accepted by the Commission and must not vary them without the consent of the Commission.

The Commission makes decisions on applications for the filing of new and modified rate and time schedules. The following table compares the number of schedule applications dealt with by the Commission for the past four licence years.

Annual Comparisons of Rate Schedule and Time Schedule Applications

Schedule	1999/2000	1998/1999	1997/1998	1996/1997
Rate Schedule (Tariff)	48	51	82	97
Time Schedule	5	11	12	10
TOTAL	53	62	94	107

FREIGHT CARGO INSURANCE

In addition to the general provisions of provincial legislation requiring vehicles to be insured for public liability and property damage, the provisions of the *Motor Carrier Act* and the *Motor Vehicle Transport Act (Canada) 1987* required motor carrier licensees transporting freight for compensation, except when specifically exempted, to take out and maintain cargo insurance coverage with respect to the loss or damage to shipments of freight. In addition to this requirement, all carriers which undertook the handling of freight shipments on a *cash on delivery* basis were required to take out and maintain fidelity bond coverage to ensure the remission of these trust funds collected on behalf of shippers.

Specific regulations made under these statutes required that these carriers file with the Motor Carrier Department, and keep in good standing, proof that they had sufficient cargo insurance and fidelity bonds. Failure to maintain such coverage resulted in an automatic suspension of the carrier's licence authority unless appropriate insurance coverage was restored.

Although freight carriers are no longer subject to economic regulation under the *Motor Carrier Act*, all commercial freight carriers that are subject to the National Safety Code are now required to maintain cargo insurance under Division 37 of the *Motor Vehicle Act Regulations*.

TEMPORARY PERMITS

Part 10 of the *Motor Carrier Regulations* enables the Commission to issue temporary permits instead of, or as an adjunct to, carrier licences. Temporary permits may authorize seasonal, emergency or occasional operation of public or limited vehicles. The following summarizes the number of permits issued during the 1999/2000 licensing year:

Permits issued that require fee payment	3221
Permits issued without a fee	69
Total permits issued	3290

LOOKING AHEAD

The Commission expects a busy year ahead with new opportunities to enhance the effectiveness of its regulation of passenger transportation. Key activities over the 2000/2001 licensing year will include:

- publication of a policies and procedures manual,
- completion of a Code of Conduct designed specifically for Motor Carrier Commissioners,
- establishment of a Taxi Advisory Committee and a Bus Advisory Committee,
- development of public information materials to enable industry and the public to better understand the regulatory and licensing practices of the Commission—for publication on the world wide web and in print form, and
- implementing any legislative changes which may occur as a result of the TIAC recommendations.

APPENDIX A: COMMISSION ORDERS

Order No. 10 - 99
Application No. 2307/98

BEFORE THE MOTOR CARRIER COMMISSION OF BRITISH COLUMBIA

IN THE MATTER OF THE MOTOR CARRIER ACT, R.S.B.C. 1996, CHAPTER 315, AND MOTOR CARRIER REGULATIONS, B.C. REG. 59/59, AND B.C. REG. 252/94 AS AMENDED;

RE:	SUN PEAKS MOUNTAIN RESORT ASSOCIATION	APPLICANT
AND:	N & J HOLDINGS LTD. WHITE ROSE LIMOUSINE LTD.	OBJECTORS
BEFORE:	RANJIET BHIMJI, COMMISSIONER	) DATED THE 12th DAY) OF APRIL, 1999
APPEARANCES:	SUN PEAKS MOUNTAIN RESORT ASSOC. N & J HOLDINGS LTD. WHITE ROSE LIMOUSINE LTD.	MIKE DUGGAN GERARD HAMONIC NO APPEARANCE

ORDER

The application of Sun Peaks Mountain Resort Association (the "Applicant") came before the Motor Carrier Commission for consideration by way of a public hearing on February 25, 1999 in Kamloops, B.C. The Applicant sought to obtain a new limited passenger licence with two (2) certificates to operate as follows:

"As a Limited Passenger Vehicle, charging individual fares, transporting a person or group of people under charter (sic) from the Kamloops Airport, Greyhound Bus Depot or Downtown Rail Station to Sun Peaks Resort; or vice versa.

Restriction:

Service under this licence is restrict (sic) to the operation of vehicle(s) with a maximum carrying capacity of eleven (11) passengers, exclusive of the driver."

The Commission reviewed the application with the parties, and outlined the procedure to be followed at the hearing. Mr. Duggan on behalf of the Applicant gave a brief overview of the operations conducted by the Applicant. He advised that "Sun Peaks" (the "Resort") is a relatively new Resort established in 1994, and its goal is to be a four seasons Resort and a leading Resort in the British Columbia Interior. He provided an overview of their desire to have year round shuttle service for patrons of the Resort and that in order for the Resort to compete with other locations in the Province such service must be available to their clientele. Mr. Duggan in his opening remarks expressed the view that the Applicant has no objection to existing operators providing charter service and outlined that the proposed service would involve one eleven (11) passenger van owned and operated by the Applicant, and a second vehicle to be leased.

Mr. Duggan called David Singh Deol to testify. Mr. Deol advised the Commission that he is a member of the Sun Peaks Board of Directors and General Manager of Sun Dance Lodge, a hotel located at the Resort. He advised that the hotel is 2 years old and focuses considerable effort on attracting business from the international market. One challenge faced by the hotel is to ensure that reliable transportation is available from the Kamloops Airport to the Resort. Mr. Deol expressed the desire to obtain a published schedule of service for clientele. In addition, he expressed the desire to obtain additional connections to the Resort to attempt to encourage individuals who may be travelling through the area on the Rocky Mountaineer Train to visit the Resort.

In cross examination, Mr. Deol expressed some concern to Mr. Hamonic that his company, N & J Holdings Ltd. ("N & J") was not legally licensed to serve the Resort. Mr. Deol expressed the view that N & J could provide no individual fare service to the Resort. He did not express complaint about the quality or nature of the service provided. In redirect, Mr. Deol expressed considerable concern at the prospect that N & J would be forced to cease providing service because of inadequate motor carrier licensing, which would place his business and the Resort at some risk.

Mr. Duggan took the stand. He advised the Commission that he is the Executive Director of the Applicant. The Applicant operates a central reservation system with five employees taking calls. Those calls originate from throughout North America, and encompass roughly 50% of the bookings make at all hotels at the Resort.

This concluded the Applicant's case. The Applicant was encouraged to file a business plan for the proposed service, but did not do so. The Applicant provided five certificates of support from five hotels located at the Resort, all of which indicated that no service was available to their premises, hence their support for the Applicant's proposal.

Mr. Gerard Hamonic took the stand. He advised the Commission that he is President of N & J. He advised that he holds a motor carrier licence issued by the Commission which provides authority for him to provide service to the Resort. Mr. Hamonic filed letters of objection to the application from N & J and other licensed carriers and expressed the view that the application if granted would cause his business to fail. He advised the Commission that he applied for temporary operating permit in 1996 - 97 and operated over that season. In February 1997 he received a motor carrier plate. He advised the Commission that he had at that point not obtained sufficient volume of business to earn a profit in his business. In 1998, Mr. Hamonic advised that he applied for a second motor carrier plate, and that the volume of business was such that he came close to breaking even. He advised the Commission he is prepared to provide whatever service is necessary to assist the Resort in growing; however, he expressed the view that a second service would not survive without substantial losses to both operations and ultimately his business would fail.

In cross examination, Mr. Duggan questioned Mr. Hamonic as to the scope of his licence. Mr. Hamonic expressed the view that he was properly licensed to serve the Resort, and relied upon the opinion of a local Carrier Safety Inspector to support his view. Mr. Duggan and Mr. Hamonic exchanged in a lively debate with respect to the terms of the licence held by N & J. Mr. Hamonic stated that all of the passengers are pre-booked and that he can provide individual fare service under the terms of his licence. Mr. Hamonic was asked if he publishes a schedule of departures and rates, and Mr. Hamonic advised that he has not done so to date. He does not advertise a per person rate for transfers between downtown Kamloops and the Resort. Mr. Hamonic also confirmed that after discussions with the Applicant, his tariff rate is $25 per person.

The Commission filed a letter of objection of White Rose Limousine Ltd. and noted their position to the application.

In closing argument, Mr. Hamonic again expressed the view that the licensing of the Applicant was unnecessary, and would lead to an over capacity in the industry which would ultimately lead to the failure of this business. He argued that he had filed evidence of the degree to which existing users are satisfied with his service, and urged the Commission to refuse the application.

In summary, Mr. Duggan argued that the Applicant required a licence in order to remain competitive with other ski hills in British Columbia. The Applicant has invested enormously in the operation of the Resort, and wished to remain competitive through individual pricing components which would include transportation from Kamloops to the Resort. He indicated that it was the desire of the Applicant to continue to use N & J, but that because its licensing was inadequate, the Applicant required a licence of its own.

The Commission has had some difficulty in assessing the merits of this application. This is as a result of a very limited quantity of evidence of public need being filed by the Applicant. The Certificates of Support filed with the application indicate that no service is available to the Resort, when in fact evidence was provided by Mr. Hamonic that he is presently servicing the Resort. Furthermore, Mr. Hamonic provided evidence of satisfaction from users located at the Resort through written commendations respecting the current service. The Applicant did not file a business plan outlining how this proposal would be viable, notwithstanding an invitation to do so. It also did not call witnesses other than Mr. Deol to outline their present experience with the services of licensed carriers. Mr. Deol's main argument in supporting the Applicant was not that the existing service was inadequate, but that there was some danger to his business and to the Resort should the Applicant be instructed to stop operating by regulatory authorities such as this Commission.

As outlined to the parties at the commencement of the hearing, an applicant bears the onus of demonstrating that there is a public need for additional licensing. The Commission has consistently held in previous decisions that its mandate to regulate the motor carrier industry requires it to consider the fostering of sound economic conditions in the transportation industry. In all applications for new authority, it is incumbent upon the applicant to establish by substantial evidence that there is a need for the services and that the existing facilities are inadequate to meet such needs. In the absence of proof of material deficiencies and available service, the mere preference of people for the proposed service does not afford a sufficient base upon which to predicate the granting of a licence. In this particular case, the Applicant has failed to demonstrate such a public need for the granting of this licence.

Having reached that conclusion, however, the Commission cannot ignore what is presently transpiring with the operation of N & J. That carrier holds two clauses of authority. The first clause only permits the operation of charter trips originating from the City of Kamloops to the ski Resort, and vice versa. It does not permit N & J to operate an individual fare basis, nor does the tariff of N & J purport to authorize a charge of $25 per person. The confusion which may have arisen appears to be from Mr. Hamonic's misunderstanding of the scope of the authority granted and the difference between individual fares and charter trip operations.

Mr. Hamonic and the Applicant appear from their demeanour in the hearing to have an amiable working relationship. Mr. Hamonic appears to have formed the view that he is properly licensed to provide individual fare service to the Resort. There were no complaints filed of inadequate service or unreasonable charges for such service provided by the Applicant. It is clear from Mr. Hamonic's testimony that he views his relationship with the Applicant as a key to the success of his business. Likewise, the Applicant recognizes that its core business is in ensuring that its member hotels and businesses are satisfied with a wide variety of services, one of which is transportation. The evidence provided by Mr. Hamonic demonstrates to the Commission that those businesses are satisfied with those services. The only substantive argument advanced by the Applicant was not with the nature of the service but with the fact that there was risk associated with that service continuing without the Resort having a contingency plan available through licensing of its own.

In order to resolve any difficulties surrounding the legality of N & J's operation, the Commission is prepared to issue to N & J a sixty day temporary operating permit. That permit will authorize it to provide an individual fare service under clause 1 of its licence, with rates to be prescribed in the tariff of $25 for adults, and $15 for children aged 6 - 12. The permit will expire and not be renewed unless N & J files the appropriate application to amend its licence to obtain permission to charge individual fares under clause 1 of their licence. That clause will only allow individual fares to be charged when service is pre-booked through the Applicant. The rates to be charged under that clause are to be negotiated between N & J and the Applicant, and the clause of authority authorizing individual fare service will only be valid so long as there is a contract between the two parties for such transportation service. In addition, the Commission will entertain a further application from the Applicant and will consider granting a licence to it if it can demonstrate that the operation of N & J is insufficient to meet its needs or service deficiencies are such that the public's service to the Resort are suffering.

Therefore the Commission ORDERS that Application No. 2307/98 be refused.

THE COMMISSION FURTHER ORDERS that costs be assessed against the Applicant and Objectors and that the security deposits filed with the Commission be retained as payment for costs.

Order No. 30 - 99
Application No. 3324/98

BEFORE THE MOTOR CARRIER COMMISSION OF BRITISH COLUMBIA

IN THE MATTER OF THE MOTOR CARRIER ACT, R.S.B.C. 1996, CHAPTER 315, AND MOTOR CARRIER REGULATIONS, B.C. REG. 59/59, AND B.C. REG. 252/94 AS AMENDED;

RE:	WESTSIDE TAXI 1998 INC.	APPLICANT
AND:	BRIDI VENTURES LTD. dba INTOWN TAXI KELOWNA CABS (1981) LTD.	OBJECTORS
BEFORE:	MARY MARTIN, COMMISSIONER	) DATED THIS 25TH DAY) OF OCTOBER, 1999
APPEARANCES:	WESTSIDE TAXI 1998 INC. BRIDI VENTURES LTD. KELOWNA CABS (1981) LTD.	GARRY BENSON LONNEY RITCHLEY MIKE NEWMAN

ORDER

The application of Westside Taxi 1998 Inc. (the "Applicant"), published as Application No. 3324/98 came before the Motor Carrier Commission for hearing on August 19, 1999 in Kelowna, B.C. The Application is for a new Limited Passenger Licence with six (6) certificates to operate as follows:

"Part 1:

As a Limited Passenger vehicle, charter trips, for business originating within a distance of forty (40) road kilometres from the Main Kelowna Post Office transporting a person or group of people under charter to any point in British Columbia or to any boundary thereof when the trip is destined to a point situated outside the Province of British Columbia.

Part 2 – As a Public Freight Vehicle transporting:

General Freight. (Charter trips). (Subject to Restrictions).	One individual or company only at any one time.	From points within a distance of forty (40) road kilometres of the Main Kelowna Post Office delivered to points in Licence District Nos. 4 and 5.

RESTRICTIONS: Re: Part 2

a) No passengers to be transported when operating as a Public Freight vehicle, and the transportation of freight will be at the filed passenger charter tariff rate of the licensee and of the rules pertaining thereto.
b) No single piece to exceed twenty-three (23) kilograms, and no single shipment to exceed ninety-one (91) kilograms.

RESTRICTIONS: Re: All Clauses

Service under this licence is restricted to the operation of vehicles with a maximum carrying capacity of five (5) passengers, exclusive of the driver."

Mr. Benson advised the Commission that the Applicant operates under a municipal licence and has four vehicles; two are owner/operated and two are owned by the Applicant. The Applicant is based on the west side of Okanagan Lake, the area known as Westbank, not including the Westbank First Nations and the City of Peachland.

Mr. Benson submitted two documents, the Westside Economic Profile 1999, Volume 3, Issue 1 and the Peachland Economic Profile 1999, Volume 4, Issue 1, which were entered as Exhibit 4. These documents provided statistical information on these particular areas. In both cases, these profiles were created by the Economic Development Commission.
Mr. Benson drew the Commission's attention to page 5 of the Westside Economic Profile, 1.1 Population Growth, which indicates that Westbank has been one of the fastest growing areas in BC which has consistently exceeded the provincial average. The total population of Westside, including the First Nations Bands, is 29,683. On page 10, section 1.9, the Economic Profile projects that by the year 2018, the population will increase to 51,676.

Mr. Benson went on to further state that information provided in the Peachland Economic Profile indicated a rapid growth as well. Page 5 of the Peachland Economic Profile, section 1.1 indicated that Peachland's population growth rate averaged between 11.2% and 11.6% per year compared to the provincial average of 2.7% per year during the period of 1991 to 1993. The present population in 1999 is 4,958.

These documents were presented to show that there is sufficient population increase on the Westbank and that Westbank alone could support the application.

Mr. Benson then entered Exhibit 5, the business plan of the Applicant. This document, among other things, outlines to the Commission in the Executive Summary, the Mission Statement of the Applicant.
"The Company's mission is to supply a much needed and desired prompt and courteous local taxi service as well as handicap van service for the Westbank and Westside area."

The business plan also provided a schedule of tariffs, schedule of staff, and owner/operator rates. The Applicant indicated that once the handicap van was purchased, a driver would be employed for its operation.

Mr. Benson called Mr. John Raymond Stover as a witness. Mr. Stover stated that he was the owner of Crown Okanagan Taxi and had been in the industry for 26 years. He incorporated his business in 1998. He owns two vehicles and two are privately owned. He also possesses a third vehicle at this time that he could put into service. He feels that the Westbank area can do with more taxi service.

Mr. Newman cross examined Mr. Stover. He asked Mr. Stover if he was the sole owner of the Applicant. Mr. Stover advised the Commission that the Applicant was just being formulated and at the present time, he held 100% of the shares. Through further cross examination, he advised the Commission that he at some future time would have an office in Westbank that would include a dispatch service. At the present time he would use a cellular phone to receive bookings. Mr. Stover also advised the Commission that he had 50 or 60 letters of support and that he had set up a booth at the Overwaitea store in Westbank where he received the letters of support. He also said while manning the booth, people indicated to him the need for taxi service. Mr. Stover advised the Commission this was the first time he had applied for a licence. Mr. Stover also advised the Commission that he planned to provide a wheelchair accessible van. On further cross examination by Mr. Newman, he indicated that he had capital funding of $40,000 in place. Mr. Stover indicated he was familiar with the Employment Standards legislation and would be responsible under the Employment Standards Act.

Mr. Benson called Mr. Denis Doyle, ICBC Carrier Safety Inspector, Compliance Operations, Kelowna as a witness. Mr. Doyle said he is a Special Constable under the Peace Act and a Motor Carrier Officer. Mr. Doyle was advised by the Commission that he was not a witness for the Applicant but rather was at the hearing to give an overview of the Okanagan Region with regard to passenger transportation. Mr. Doyle said that his role was in Compliance. He advised the Commission that in 1992 the municipalities in his region began to issue taxi licences to motor carriers that did not possess a motor carrier licence. Kelowna in particular has about 20 – 22 unlicensed taxi operations. These taxis only possess municipal licensing. Mr. Doyle said in his capacity to inspect vehicles, he can also inspect drivers. Mr. Doyle says his department has inspected all taxis licensed in the central Okanagan and that the inspection results were very good with a low out of service rating. The vehicles were of a satisfactory nature. The last inspection took place in June of 1999. Mr. Doyle indicated that the only complaints about the industry come from the players in the industry in regard to unlicensed carriers and he was not aware of complaints from passengers.

Mr. Lonney Ritchey appeared for Bridi Ventures Ltd. dba In Town Taxi ("Bridi Ventures"). He was appearing on behalf of B. Tourand, the owner of Bridi Ventures who was unable to attend. Mr. Ritchey stated that the letter dated July 30, 1999 was a letter of protest. Bridi Ventures had been serving the community for two years. On the recommendation of a consultant, Bridi Ventures held back from making application to the Motor Carrier Commission for licensing as it was the consultant's belief that the *Motor Carrier Act* was to be amended. Mr. Ritchey advised the Commission that he was the owner of City View Water Taxi and that he was withdrawing the support for the Applicant.

Mr. Mike Newman represented Kelowna Cabs 1981 Ltd. ("Kelowna Cabs"). He reviewed the application and intended to show evidence that the Applicant would have to operate in the Kelowna area, i.e. the Kelowna area. Mr. Mike Newman presented a document of 25 pages of which Mr. Garry Benson and the Commission had not previously seen. Mr. Benson objected to the document being entered as an exhibit as he considered it to be a substantial document, and required time to analyse and prepare for cross examination.

Mr. Newman advised that the document was compiled from observations and company records.

Mr. Garry Benson agreed that the document could be presented to the Panel Chairperson by marking it "Marked for Identification" – Exhibit 7.

Commissioner Martin advised that Mr. Garry Benson had the right to go through the document and make written submission by September 1, 1999.

Mr. Newman called Mr. Allan Feldstein as a witness. Mr Feldstein is an owner of Kelowna Cabs and has been operating for 19 years and decided to put one car on the Westbank to serve customers. He had not found Winfield to be successful and had two to three calls for taxi service per week. Mr. Feldstein said there was more business in Kelowna. The demand for a wheelchair accessible vehicle would be two to three trips per day and would be the result of trips the HandiDart could not supply.
In cross examination by Mr. Benson, Mr. Feldstein said he was the owner of five vehicles, two sedans, two wheelchair accessible cabs and one vehicle that was being replaced.

Mr. Newman called Mr. Edward Williams, a dispatcher with Kelowna Cabs since 1987. Mr. Williams testified that calls from Westbank on an average day in a 24 hour period are 30 – 35 during the day and 6 at night. He said one car is kept in Westbank at all times and one car services Lakeview Heights. Mr. Williams advised the Commission they could have as many as 20 wheelchair requests a week, but this would also drop to ten some weeks. Mr. Williams said that Kelowna Cabs had 5 regular customers which they transported during the day.

Mr. Benson asked Mr. Williams why he believed that one car is adequate to serve the 35,000 residents of Westside. Mr. Williams responded, that he knows about trip counts and that it was not profitable there.

Mr. Newman called six more witnesses who testified that there was not sufficient business to warrant the issuance of a further licence.

The Commission received written submissions from Kelowna Cabs dated August 25, 1999. The Applicant provided two written submissions, one August 31, 1999 and the rebuttal to the submission of Kelowna Cabs dated September 7, 1999. The Commission carefully reviewed the three written submissions.

The Commission has given careful consideration to this application. The Commission has heard evidence by way of Mr. Denis Doyle that the Municipality of Kelowna has issued municipal licences to unlicensed taxi cab companies who do not hold motor carrier authority. The Applicant operates under just such a licence and has four vehicles.

The Applicant has obviously developed a clientele within the unregulated environment and now wishes to conform to the *Motor Carrier Act*. It is clear from the evidence provided, particularly Exhibit 4, the economic profiles of Westside and Peachland, that there is sufficient population to support the Applicant.

The Commission THEREFORE ORDERS that Application No. 3324/98 be GRANTED IN PART.

The Commission notes that because of initiatives to ease the restrictions on freight licensing in preparation for deregulation of freight on January, 2000, the freight clause requested by the Applicant will be adjusted to reflect these initiatives. This amendment was agreed to by the Applicant.

The licence will read as follows:

"Part 1:

As a Limited Passenger vehicle, charter trips, for business originating within a distance of forty (40) road kilometres from the Main Kelowna Post Office transporting a person or group of people under charter to any point in British Columbia or to any boundary thereof when the trip is destined to a point situated outside the Province of British Columbia.

Part 2 – As a Public Freight Vehicle transporting:

General Freight.	One individual or company only at any one time.	Between points in British Columbia.

RESTRICTIONS: Re: Part 2

c) No passengers to be transported when operating as a Public Freight vehicle.
d) No single piece to exceed twenty-three (23) kilograms, and no single shipment to exceed ninety-one (91) kilograms.

RESTRICTIONS: Re: All Clauses

a) Service under this licence is restricted to the operation of vehicles with a maximum carrying capacity of five (5) passengers, exclusive of the driver.
b) Licensee must maintain a minimum of one wheelchair accessible vehicle which must be stationed in the Westside area and be available on a priority basis to residents in Westside, Peachland and Westbank during 0700 hours and 2300 hours.
c) Any transfer, sale, assignment, or change in the beneficial ownership of this licence authority shall cancel the authority unless the transfer, sale, assignment or change in the beneficial ownership is approved of beforehand by the Motor Carrier Commission."

THE COMMISSION FURTHER ORDERS that costs be assessed against the Applicant and Objectors and that the security deposits filed with the Commission be retained as payment for costs.

Order No. 22 - 99

BEFORE THE MOTOR CARRIER COMMISSION OF BRITISH COLUMBIA

IN THE MATTER OF THE MOTOR CARRIER ACT, R.S.B.C. 1996, CHAPTER 315, AND MOTOR CARRIER REGULATIONS, B.C. REG. 59/59, AND B.C. REG. 252/94 AS AMENDED; AND IN THE MATTER OF THE MOTOR VEHICLE TRANSPORT ACT, S.C. 1987; AND PURSUANT TO SECTION 10 OF THE MOTOR CARRIER ACT:

RE:	ROYAL CITY TAXI LTD.	RESPONDENT
BEFORE:	JOHN HOOPER, COMMISSIONER RANJIET BHIMJI, COMMISSIONER	) DATED THIS 29th DAY) OF SEPTEMBER, 1999
APPEARANCES:	ROYAL CITY TAXI LTD. SPECIFIC SHAREHOLDERS OF ROYAL CITY TAXI LTD. MOTOR CARRIER COMMISSION	MARK MCDONALD WILLIAM A. MCLACHLAN GEORGE GREGORY

ORDER

Royal City Taxi Ltd. (the "Respondent") appeared before the Motor Carrier Commission on September 20, 1999, pursuant to section 10 of the *Motor Carrier Act*, R.S.B.C. 1996, Chapter 315, as amended. The matter before the Commission was whether the Commission should amend, suspend or cancel the licences and certificates held by the Respondent for alleged violations of the Act.

The Respondent made a preliminary submission that the Motor Carrier Commission lacked jurisdiction to proceed with the matter before it. Counsel submitted that the appointment process of Commissioners to the Motor Carrier Commission, consisting of at pleasure Order in Council appointments, was insufficient to ensure security of tenure to the adjudicators. This lack of security of tenure resulted in a lack of independence from the executive branch of government.

Given that the Commission panel was about to consider a matter which could result in penal sanctions equivalent to what a court of law could impose, it was essential that a high level of administrative fairness be met. An appropriate level for the Commissioners would be a similar level as that held by a court of law. Given that this standard of procedural fairness could not be met, due to the lack of independence caused by the appointment process, the Commission lacked jurisdiction to consider this matter.

The Respondent relied upon the recent British Columbia Court of Appeal decision in *Ocean Port Hotel Ltd.* vs. *The General Manager, Liquor Control* (BCCA 1999 317). In *Ocean Port*, the Honourable Madame Justice Huddart found that the terms of appointment to the Liquor Appeal Board (at pleasure Order in Council appointments) were insufficient to ensure security of tenure to the adjudicators, leading to a lack of independence. The matter before the Liquor Appeal Board could result in consequences (suspension of a licence to operate with substantial economic consequences) at least equal to the type of penalties which could be imposed by a court of law.

Mr. William McLachlan, who had been granted full status to represent individual shareholders whose certificates were at risk pursuant to paragraph four of the Notice of Hearing, dated February 22, 1999, made a submission as well as concurred with Mr. McDonald.

The Court found that at pleasure Order in Council appointments to administrative bodies "exercising the power to impose sanctions for violations of statutes comparable to that possessed by courts of law are not sufficient to satisfy the requirement of security of tenure and that for such agencies security of tenure is an essential requirement of independence". This insufficiency of independence caused the court to find the Board lacked jurisdiction and to set aside the Board's decision.

Currently the Motor Carrier Commissioners are at pleasure Order in Council appointments. The matter before the panel is the consideration of the appropriate sanctions for significant, alleged violations of the *Motor Carrier Act* which could be potentially comparable to the penalties imposed by a court of law. Given the similarity of the appointment process for the Motor Carrier Commission and the potential for the perception of lack of independence, and the characterization of the particular matter before us today, we have decided that this panel is bound by *Ocean Port*. Therefore this panel currently does not have jurisdiction to hear and adjudicate the matter before it.

NOTICE OF HEARING

RE: ROYAL CITY TAXI LTD. RESPONDENT

TAKE NOTICE THAT the Motor Carrier Commission will hold a hearing to determine the following two questions:

1. Does the British Columbia Court of Appeal case of Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control), [1999] B.C.J. No. 1112 apply to the Motor Carrier Commission, with the result that the Commission does not have jurisdiction to hear and adjudicate matters pursuant to section 10 of the Motor Carrier Act?
2. If the answer to Question 1 is that the Motor Carrier Commission has jurisdiction to hear and adjudicate matters pursuant to section 10 of the Motor Carrier Act, is the September 29, 1999 decision (Order No. 22-99) of the panel in Royal City Taxi Ltd. revoked?

This hearing will be held at **9:30 a.m. on January 26, 2000** at:
Motor Carrier Commission Hearing Room
4240 Manor Street
Burnaby, BC
This hearing will be based on written submissions which must be provided in accordance with this Notice, and oral submissions which will be time limited.

Motor carriers who wish to be heard at this hearing must:

(a) file a written notice of their intention to participate with the MCC (Victoria) office, at the address below, **on or before noon, December 6, 1999**. This notice must contain an address for delivery and a fax number, if available; and
(b) file seven (7) copies of their written submission with the MCC office, at the address below, **on or before noon, January 7, 2000**.

For the purpose of this hearing, those carriers who have provided their notice of intention to participate will be provided with further particulars on or before December 13, 1999, either by fax or regular mail.

Motor Carrier Commission
200-703 Broughton Street
Victoria, BC
V8W 1E2
Phone: (250) 953-3777
Fax: (250) 953-3788

DATED at the City of Victoria in the Province of British Columbia this 16th day of November, 1999.

NOTICE OF ADJOURNMENT

RE: ROYAL CITY TAXI LTD. RESPONDENT

TAKE NOTICE THAT the hearing which commenced on January 26, 2000, has been adjourned and will recommence on **May 30, 2000 at 9:30 a.m.** at:

Motor Carrier Commission Hearing Room
4240 Manor Street
Burnaby, B.C.

DATED at the City of Victoria in the Province of British Columbia this 31st day of January, 2000.

APPENDIX B: RECONSIDERATION PANEL ORDERS

Order No. RE11 - 99
File No. R6/99

BEFORE THE MOTOR CARRIER COMMISSION OF BRITISH COLUMBIA
RECONSIDERATION PANEL

IN THE MATTER OF THE MOTOR CARRIER ACT,
R.S.B.C. 1996, CHAPTER 315, AND MOTOR CARRIER
REGULATIONS, B.C. REG. 59/59, AND B.C. REG. 252/94
AS AMENDED;

AND

IN THE MATTER OF APPLICATION NO. 2959/98
HARDYAL SINGH DHANOA

BEFORE: VICKI FARRALLY, COMMISSIONER)
PETER KNITTEL, COMMISSIONER) ON THE 5TH DAY
BARRIE SANFORD, COMMISSIONER) OFAUGUST, 1999

ORDER

UPON THE APPLICATION of Hardyal Singh Dhanoa (the "Applicant), published as Application No. 2959/98, coming on for hearing before the Reconsideration Panel (the "Panel") on the 5th day of August, 1999 at Vancouver, BC; and upon hearing from Hardyal Dhanoa, and Shelley Troupe, consultant for the Applicant; and there being no objectors.

APPLICATION:

The Application was for a new Limited Passenger Licence with three (3) certificates to operate as follows:
"As a Limited Passenger vehicle (LIMOUSINE), charter trips, transporting a person or group of people between points within an area comprising Licence District Nos. 9A, 14, 14A and 15.

RESTRICTIONS:

1. No service of a taxicab nature may be provided. A taxicab is defined as a vehicle operating with a top light, meter and radio and/or computer dispatch terminal, and charging the public on a flag rate and measured kilometre basis."

The Applicant was granted Leave under Section 54(1)(b) of the *Motor Carrier Act* (the "Act"), that there are probable grounds the decision may be inconsistent with the principles expressed or implied in the Act.

BACKGROUND:

Mr. Hardyal "Harry" Dhanoa has operated a limousine service based in Surrey, doing business as Firststar Fancy Limousine Service for approximately ten years under the authority of another licence. In October of 1998 Mr. Dhanoa applied for a licence of his own and three certificates. In February 1999 the requested licence was granted but he was allowed only one certificate, not the three requested. He subsequently filed for Reconsideration, requesting that all three certificates originally sought be granted to him.

ISSUE

Was the Motor Carrier Commission's decision to issue less than the three certificates requested inconsistent with the principles expressed or implied in the Act?

SUBMISSION

1. Mr. Dhanoa's original application was accompanied by 84 Certificates of Support. Mr. Dhanoa testified that he was informed by staff of the Motor Carrier Department in Burnaby that this was sufficient support to secure approval of his original application for three certificates.

2. The objection filed by Bel-Air Taxi against the original application was motivated more by a previous unfavourable incident between Mr. Dhanoa and the taxi company than genuine business considerations. As evidence of this allegation, Mr. Dhanoa and his counsel pointed out that Bel-Air had chosen not to file objection to the Application for Leave for Reconsideration and did not appear at the current hearing.

3. The inspector who prepared the original report stated that the Applicant was free to apply for permits to cover busy periods of the year, and therefore did not need expanded operating authority. However, the Inspector's statement ignores the reality that financial institutions will loan money to purchase or lease vehicles only when a licence and certificate have already been granted. The ability to secure a permit is meaningless if one cannot secure funds to acquire a vehicle.

4. Mr. Dhanoa has operated a consistent, high quality limousine service for nearly a decade. This devotion to quality is bringing him considerable business as a result of favourable recommendations by his past customers to people seeking limousine service. Mr. Dhanoa stated that he is currently having to turn away numerous requests for charters because of a lack of vehicles to service the business being offered him.

5. The market for limousine service is growing steadily. Part of this growth has come about by the design of most modern standard passenger sedans, which limits front seating to the driver and one passenger. As a consequence, most taxi vehicles can now seat only four passengers, instead of the five passengers traditionally allowable. This means that for groups of five to ten people it is usually more economical to charter a single limousine than two or three taxi cabs.

6 The demand for limousines has also risen because of the large number of movies being filmed in the Vancouver area. The movie industry often needs limousines on a daily basis for periods of four to eight weeks during filming. Ethnic weddings and family celebrations are also a growing source of business for limousines. Groups from other cultures tend to have more elaborate festivities associated with family occasions than established Canadians, and the need for limousine services to meet these needs can be easily overlooked.

JUDGEMENT

The Reconsideration Panel considered the following issues to be relevant in this case:

1. The Reconsideration Panel decided not to consider Mr. Dhanoa's testimony concerning statements made to him by Motor Carrier Department staff about the probability of his application being accepted. The Panel had to take into consideration the fact that Mr. Dhanoa's testimony was not made under oath and the fact that Department staff were given no opportunity to offer possible contrary testimony at the hearing. In any event, this decision by the Reconsideration Panel did not influence its overall conclusion and judgement.

2. The Reconsideration Panel is of the opinion that the 84 Certificates of Support provided by the Applicant were not adequately considered by the Commission. In producing a "Certificate of Support" form, the Motor Carrier Commission implies that completed certificates become an important part of the Commission's analysis of an application. The Commission cannot fairly expect Applicants to go to the trouble and expense to secure Certificates of Support, then regard them frivolously. Although it appears there were some errors or inconsistencies among the Certificates of Support submitted by Mr. Dhanoa, the Reconsideration Panel believes the Applicant did a satisfactory job in establishing evidence of public need for the services proposed in the application.

3. The Reconsideration Panel is of the opinion that Mr. Dhanoa, in his statements at the Reconsideration Hearing, provided acceptable evidence that expansion of his operating authority would contribute to improved service to the public.

ORDER

This Reconsideration Panel **ORDERS** that two additional certificates be issued for the existing Limited Passenger Licence held by Hardyal Singh Dhanoa. This will bring his total number of certificates to three. There is to be no change to the operating conditions of his licence.
THE PANEL FURTHER ORDERS that costs of this reconsideration hearing be and are hereby assessed against the Applicant in the amount of $150, being the like amount posted as security for costs.
DATED at the City of Merritt, in the Province of British Columbia, this 16th day of August, 1999.

Order No. RE 12 - 99
File No. R8/99

BEFORE THE MOTOR CARRIER COMMISSION OF BRITISH COLUMBIA
RECONSIDERATION PANEL

IN THE MATTER OF THE MOTOR CARRIER ACT,
R.S.B.C. 1996, CHAPTER 315, AND MOTOR CARRIER
REGULATIONS, B.C. REG. 59/59, AND B.C. REG. 252/94
AS AMENDED;

AND

IN THE MATTER OF APPLICATION NO. 2447/98
LAWRENCE VICTOR O'CONNOR

BEFORE:	BOB MARTIN, COMMISSIONER BARRIE SANFORD, COMMISSIONER GAIL DAVIDSON, COMMISSIONER	)) ON THE 13TH DAY) OF OCTOBER, 1999
APPEARANCES:		
APPLICANT:	LAWRENCE VICTOR O'CONNOR	LARRY O'CONNOR BRIAN O'CONNOR
OBJECTOR:	TOWN TAXI (1987) LTD.	MONA NIEBERGALL BRAD NIEBERGALL THOMAS SMITH ERNEST KUTRIEB

ORDER

UPON THE APPLICATION of Lawrence Victor O'Connor (the "Applicant") published as Application No. 2447/98, coming on for hearing before the Reconsideration Panel (the "Panel") on the 13th day of October, 1999 at Williams Lake, B.C.; and upon hearing from the Applicant and the Objector.

APPLICATION

The application is for a new Limited Passenger Licence with seven (7) certificates to operate as follows:

"As a Limited Passenger Vehicle (taxi and limousine), charter trips, transporting a person or group of people under charter from points within an area bounded on the north by Marguerite, on the south by Wright Station Road (north of Lac la Hache), on the west by Alexis Creek, and on the east by Horsefly and Likely, including the Dog Creek Road to Dog Creek, to any point in British Columbia, and return with the same person or group of people if arranged for on the same charter.

Part 2: As a Public Freight Vehicle Transporting:

General Freight (Charter trips).	One individual or company only at any one time.	Between points within an area bounded on the north by Marguerite, on the south by Wright Station Road (north of Lac la Hache), on the west by Alexis Creek, and on the east by Horsefly and Likely, including the Dog Creek Road to Dog Creek

RESTRICTION:

Service under this licence is restricted to the operation of vehicles with a carrying capacity of not less than five (5) passengers, and not more than eleven (11) passengers, exclusive of the driver."

RECONSIDERATION

The Applicant was granted Leave under s. 54(1)(a) of the Motor Carrier Act (the "Act") on the basis that evidence not available at the time of the original decision has become available.

BACKGROUND

The Applicant is based in Williams Lake and currently does not hold a motor carrier authority. The Applicant does hold authority to operate within the City of Williams Lake.

The application for a new Limited Passenger Licence was refused by the Commission for the following reasons:

1. the applicant failed to demonstrate that there is sufficient public need for an additional taxi service,

2. that the granting of this licence would be in excess of the requirements of the area for taxi service, and

3. that the impact of granting such a licence would be contrary to the public interest.

ISSUE

Does the evidence not available at the time of the original decision indicate the Motor Carrier Commission's decision to refuse the application should be confirmed, reversed, altered or varied by the Reconsideration Panel?

SUBMISSION

Since leave was granted under Section 54.(1)(a) of the Act, the Panel could hear new evidence.

Attached as Schedule A is a list of Exhibits entered at this reconsideration hearing.

The Applicant, Larry O'Connor indicated to the panel that he strongly objected to the presence of the Objector when he had previously been informed that he would be the only one in attendance at the reconsideration hearing.

The Reconsideration Panel explained to Mr. O'Connor that counsel for the Commission had indicated to the Panel that Town Taxi's letter indicating they would continue their standing from the first hearing in February should be acknowledged. The Panel indicated that the Commission would hear the evidence on October 13th as scheduled, but would review the matter and defer making a decision on this matter regarding its admission.

Having reviewed the matter, the Panel finds that the objector continues to have standing from the original application and its submission is admissible. However, the Panel will also consider the relevance of that evidence to the issues at this hearing and decide what weight it should be given in making their decision.

Mr. O'Connor, the Applicant, appeared before the Panel and explained why he felt the application should have been granted. Specifically, regarding the reasons given by the Commission for refusal:

1. re: need for service proposed - Mr. O'Connor felt he had established public need before the original decision of the Commission, being that his evidence was by reliable, credible witnesses, in written form, and was not in fact all by former employees of Town Taxi. He reiterated that many were simply users of taxis, and to disqualify all the evidence on the basis that the Commission did was unfair. He felt there was a good representation of the population and that there would have been an even stronger show of support if the timing of the hearing had not been during the regular workday, making it difficult for people to attend. He also clarified that the ad he had placed in the newspaper was not published until the day of the hearing. He indicated that it was not right to discredit letters of support to his company, just because the same individuals had at any time supported Town Taxi. He submitted additional letters and information to the Panel to be added to the package received in July. All of these appear in Schedule A.

2. re: granting licenses in excess of needs- Mr. O'Connor felt that this determination, being solely based on the evidence of the objectors, was incorrect. He indicated he felt there was a lifestyle improvement over the period in question for the Objectors, and that not only was there no concrete evidence that their business was struggling as they indicated, there was also no clear evidence that Williams Lake was in a depressed state such that it could not support another taxi company licensed by the Motor Carrier Commission. Mr. O'Connor indicated that he questioned the credibility of the Objectors information, as demonstrated by the missing trip sheet at the hearing. He then provided the Panel with a title search document that he felt had an inconsistent address on it. The Panel indicated to Mr. O'Connor that there were a variety of corporate structures that are possible for the Objector's company, and that an address other than at the storefront of a business is not uncommon or necessarily an issue.

Mr. O'Connor indicated that both he and the support letters indicate that mining is still healthy, and that forestry is doing relatively well, especially compared to the rest of the province.

Mr. O'Connor feels the additional evidence, letters and the entrance of new businesses such as Air BC, demonstrate the need for another taxi company and the need to improve levels of service in town, as well as outside the city. He also reminded the Panel that the original inspector's recommendation was to grant the licence.

Mr. O'Connor expressed the position that the need for more taxis is confirmed by the Objector having applied to the Commission for what he believes to be a similar area to what he is applying, but also expressed discomfort with the fact they were not taken to public hearing as he was.

Mr. O'Connor summarized by recapping the above information and closing that he felt the original evidence, coupled with his new evidence presented about the need, the economy, and the demographics of Williams Lake, supported the decision that the licence should be granted. In response to a Commissioner's question he indicated that he didn't expect the business outside the city to be a large part of his focus, but that with his main thrust being to decrease drinking / driving statistics, it would be a necessary part of his licence.

Mrs. Niebergall of the Objector appeared before the Panel and explained why she felt the original Commission decision should be upheld.

Mrs. Niebergall presented the information that there are currently three taxi companies operating in the city, as she believes one company is currently operating without a license. She indicated that the new letters of support were not significant as she believes they are repeats of February information and had been previously dealt with. She also indicated that in her opinion the letters about the economy do not prove anything about the status of the economy. She feels that local businesses, including the RCMP and ICBC, would support an application for 100 more cabs, but that you cannot force drunks to take a cab.

Mrs. Niebergall stated the difficulty in operating in an environment without a level playing field as her company is operating completely legally where others may not be.

Mrs. Niebergall then asked to present information from Thomas Smith, a driver. Mrs. Niebergall questioned Mr. Smith about his employment with the Appellant. He indicated that he had worked with them three days, and had picked up fares outside the city as well as heard others on the radio doing the same. He indicated that he had been told to turn off the meter, and was paid 40% of his trip sheet. Mrs. Niebergall then described that the ex-employee had never been given a pay slip, vacation pay or a record of employment, and that she believed there may have been inequities taking place by the employer with respect to its legal obligations. The Panel indicated to Mrs. Niebergall that there were relationships other than employee / employer that could be set up with drivers so this situation was not necessarily a problem. She indicated her frustration at having filed letters with the Commission, but wasn't able to have much done unless the Applicant was caught with a fare outside of city limits. She also said there had been a lukewarm reception by the RCMP due to the confusion of the requirements of the licences, and that this confusion had only recently been clarified.

Mrs. Niebergall then gave the panel a receipt from Totem Taxi for service outside of city limits obtained by Mr. Ernest Kutrieb, who was also present. She showed the panel on a map where Mr. Kutrieb's destination had been, which was to Wise Place, outside of city limits. She also gave the panel a letter from Polley Mine, which is part of Schedule A.

Mr. Niebergall then spoke, indicating that Mr. Vince Pleasant, who is an employee at Polley Mine, had indicated to him that he was a friend of Mr. O'Connor who was trying to set up a contract with mine employees.

Mrs. Niebergall indicated that she did not feel Mr. O'Connor backed up his claim that their evidence at the original hearing was not credible. For the record, she indicated the address on the title search documents provided by Mr. O'Connor (in Schedule A) is her home address. She also wanted to clarify that the Commission application referred to by Mr. O'Connor was simply a clarification, not an application for more territory, and that they had not added vehicles to their fleet as implied by Mr. O'Connor.

Mrs. Niebergall summarized the above information in closing and indicated that she felt the evidence was not significantly different from that presented in February.

JUDGEMENT

The Reconsideration Panel considered the Commission's reasons for refusal in light of the points presented by the Applicant and Objector and made the following determinations:

1. The applicant did demonstrate that there is sufficient public need for an additional taxi service. The applicant obtained a significant number of letters of support. These were both for additional service, and also regarding the economic condition of Williams Lake. Regarding the overall economic situation in Williams Lake, although not currently growing, there is not adequate evidence to say that the community's general overall growth trend and demand for services will not continue. The population of Williams Lake and area as submitted by both the Appellant and the Objector indicate a community size typically able to accommodate two taxi companies and benefit from the competition two companies provide. From the information received, this benefit seems already apparent within the city limits, with the two companies both servicing this area for many months now. Despite the opinion of the Objector that the evidence consisting of letters from ICBC and the RCMP were easily obtained, the Panel found that they should not be ignored.

2. The granting of this licence would not be in excess of the requirements of the area for taxi service. In the opinions of both the Appellant and the Objector, the portion of the business pertaining to outside the city is limited and the two companies are both currently operating within the city as the main part of their businesses. Combined with the conclusions above, granting an additional licence to service outside the city would result in the level playing field that both the Appellant and the Objector clearly want, would better service the outlying areas particularly at bar closing time, and would not have any further significant negative impact on the economics of any individual party. Therefore in granting this licence, the Panel feels that it meets its responsibility as outlined in the original order of leaving intact the existing carrier's ability to survive and prosper, ensuring the public is being offered reasonable and efficient service, and guarding against the danger of the development of a transportation monopoly.

3. The impact of granting such a licence would not be contrary to the public interest. Rather, given the evidence, it would seem that the competition has already been healthy to the availability and nature of service available. In addition, and to the frustration of both the Applicant and the Objector, there appears to have been significant confusion within the community, including users and enforcers, as to who can do what where. The Panel finds that the public interest would also be better served with a less varied and cumbersome set of rules within the community.

ORDER

THE RECONSIDERATION PANEL ORDERS that the Applicant be granted the new Limited Passenger Licence as published.

THIS PANEL FURTHER ORDERS that costs of this Reconsideration Hearing be and are hereby assessed against the Applicant in the amount of $150, being the like amount posted as security for costs.

DATED at the City of Victoria in the Province of British Columbia, this 22nd day of October, 1999.

Order No. RE 13 - 99
File No. R11/99

BEFORE THE MOTOR CARRIER COMMISSION OF BRITISH COLUMBIA
RECONSIDERATION PANEL

IN THE MATTER OF THE MOTOR CARRIER ACT,
R.S.B.C. 1996, CHAPTER 315, AND MOTOR CARRIER
REGULATIONS, B.C. REG. 59/59, AND B.C. REG. 252/94
AS AMENDED;

AND

IN THE MATTER OF APPLICATION NO. 236/99
DREXLER CANADA TOURS LTD.

BEFORE: ROBERT W. MARTIN, COMMISSIONER)
BARRIE SANFORD, COMMISSIONER) ON THE 14TH DAY
GAIL DAVIDSON, COMMISSIONER) OF OCTOBER, 1999

ORDER

UPON THE APPLICATION of Drexler Canada Tours Ltd. (the "Applicant), for a new limited passenger licence with one certificate, published as Application No.236/99, coming on for hearing before the Reconsideration Panel (the "Panel") on the 14th day of October, 1999 at Grand Forks, BC; and upon hearing from Gerd Drexler, of the Applicant; and the objector, Don Fitchett, President of Jokat Enterprises Ltd. and Clause Spickermann, Consultant.

APPLICATION:

The application was as follows:
"As a limited passenger vehicle, charging individual fares, transporting a person or group of people from Grand Forks, Greenwood, Midway, Rock Creek and Christina Lake to Kelowna, Penticton, Nelson and Trail on day trips, and return.

As a limited passenger vehicle, charging individual fares, transporting a person or group of people over sightseeing routes as described in the current tariff of Drexler Canada Tours Ltd. as filed with and approved by the Motor Carrier Commission and as amended from time to time with the approval and on the authority of the said Commission. The tour routes for the tours described are incorporated into and form part of the Conditions of Licence of Drexler Canada Tours Ltd. and must be attached to these Conditions of Licence.

Tour 1: Goldrush (4 weeks)
Tour 2: Bear Tour (3 weeks)
Tour 3: Rocky Mountain Tour (2 weeks)

RESTRICTIONS:

1. No service of a taxicab nature may be provided.
2. This licence is restricted to the operation of a vehicle with a maximum carrying capacity of five (5) passengers, exclusive of the driver."

The Applicant was granted leave under section 54(1)(b) of the *Motor Carrier Act* (the "Act") that there are probable grounds that the decision may be inconsistent with the principles expressed or implied in the Act.

BACKGROUND:

The Applicant is based in Grand Forks and applied for a licence to operate a tour company offering individual fares to the Okanagan and West Kootenay destinations and offering pre-paid tours to German tourists.

The application was refused for the following reasons:

1. The applicant and supporters have not proven that licensed carriers are unable or unavailable to provide the service.
2. When considering an application, the Motor Carrier Commission may take into consideration that the issuance of the new licence would be detrimental to licensed carriers as per the Motor Carrier Act, section 5(2)(b) which reads "the general effect on other transport services and any public interest which may be affected by the issue of the licence."

ISSUE

Was the Motor Carrier Commission's decision to refuse the application inconsistent with the principles expressed or implied in the Act.

SUBMISSION

Since leave was granted under Section 54(1)(b) of the Act, the Panel could not hear new evidence.

Mr. Drexler Jr. of the Applicant appeared before the Panel and explained why he felt the application should have been granted.

Mr. Drexler Jr. indicated that the Applicant had not intended to request anything similar to a taxi service in their licence application and has no intention of running a taxi service. In regards to the German Tour portion of the application, he submitted that, although not in an official contract form as the inspector was requesting, the arrangement with the travel agency was documented and, in fact, the agency has many offices throughout Germany. Therefore he felt the arrangement was adequate to provide reassurance regarding the market need and that the need could not be currently met by the licensed carriers in the area. Regarding the day excursions, he indicated that they only anticipated plan ahead tours with drops along the way; they would not do them on demand, and likely would not run a bus if less than four people required a particular trip. He also indicated that the day tour portion of the application was clearly an afterthought based on requests from the local citizens and was not part of the original business plan of the company.

Arno Hennig then spoke on behalf of the Applicant. He submitted that part of the confusion came about as a result of the Motor Carrier Commission's lack of clear direction as to what an individual can and cannot apply for in order to truly get what they require. He indicated he supports German tourism in the area and stressed the Applicant is trying to be a tour business, and nothing else. The misunderstanding about day trips and hospital visits, etc. were quickly discarded once both the objector and the Motor Carrier Commission pointed out to them there were concerns.

Mr. Spiekermann, Consultant for the Objector appeared before the Panel and explained why he felt the application was appropriately not granted.

Mr. Spiekermann submitted that the Applicant's fullest operating mandate would have an impact on the Objector's business as Grand Forks Taxi is already licensed to do excursion tours of up to ten people and at the Motor Carrier Commission's required rates. They currently have 24 hour transport on call and do tours to Kelowna, East Kootenays and Washington. Mr. Spiekermann indicated that although many letters of support indicated that a cheaper service as desired, for safe service to be provided to customers and a reasonable wage to drivers, the current tariffs would have to be respected. He indicated that the Objector is anticipating changes recommended in the Lanyon Report whereby a more flexible tariff system can be developed benefiting both user and provider of the service. He also stated that he would like to applaud the Applicant for having clearly stated that they are not interested in a taxi business as that was their concern about the application.

JUDGEMENT

1. The day trip portion of the application too closely resembled the service of a taxi and the Applicant was unable to demonstrate the need for another taxi service.
2. The Applicant did demonstrate that there is a demand for pre-arranged and pre-paid tours from Germany to British Columbia and that they would be of benefit to the region, and not be to the detriment of currently licensed carriers.
3. The Objector, Jokat Holdings Ltd., showed that there were sufficient taxis and vans for local tours to meet present needs.

ORDER

The Reconsideration Panel ORDERS that Application No. 236/99 be granted in part to read as follows:
"As a limited passenger vehicle, charging individual fares, transporting a person or group of people over sightseeing routes as described in Appendix A. The tour routes for the tours described in Appendix A are incorporated into and form part of the Conditions of Licence of Drexler Canada Tours Ltd. and must be attached to these Conditions of Licence.

Tour 1: Goldrush (4 weeks)
Tour 2: Bear Tour (3 weeks)
Tour 3: Rocky Mountain Tour (2 weeks)

RESTRICTIONS:

1. No service of a taxicab nature may be provided.
2. This licence is restricted to the operation of a vehicle with a maximum carrying capacity of five (5) passengers, exclusive of the driver.
3. All passengers transported under this licence will be tourists visiting British Columbia from a country other than Canada."

The Applicant must revise the tariff submitted with its application to remove any reference to day tours and to provide rates in dollars and cents (CDN) and provide a new copy to the Motor Carrier Department, 104 – 4240 Manor Street, Burnaby, BC V5G 1B2.
THE PANEL FURTHER ORDERS that costs of this reconsideration hearing be and are hereby assessed against the Applicant in the amount of $150 and the Objector in the amount of $100, being the like amount posted as security for costs.
DATED at the City of Victoria, in the Province of British Columbia, this 19th day of November, 1999.

Order No. RE2 - 00
File No. R9/99

BEFORE THE MOTOR CARRIER COMMISSION OF BRITISH COLUMBIA
RECONSIDERATION PANEL

IN THE MATTER OF THE MOTOR CARRIER ACT,
R.S.B.C. 1996, CHAPTER 315, AND MOTOR CARRIER
REGULATIONS, B.C. REG. 59/59, AND B.C. REG. 252/94
AS AMENDED;

AND

IN THE MATTER OF APPLICATION NO. 3685/98
PHILLIP JOHN BEDDOES MORGAN

BEFORE: GAIL DAVIDSON, COMMISSIONER)
PETER KNITTEL, COMMISSIONER) ON THE 10TH DAY
BARRIE SANFORD, COMMISSIONER) OFDECEMBER, 1999

ORDER

UPON THE APPLICATION of Phillip John Beddoes Morgan (the "Applicant), published as Application No.3685/98, coming on for hearing before the Reconsideration Panel (the "Panel") on the 10th day of December, 1999 at Parksville, BC; and upon hearing from Phillip Morgan, of the Applicant; and Michael Cafferky, General Manager, Gray Line of Victoria Limited, the Objector and the Objector's counsel, Tobin Robbins.

APPLICATION:

The Applicant was granted Leave for Reconsideration under section 54(1)(b) of the *Motor Carrier Act*, that there are probable grounds the decision may be inconsistent with the principles expressed or implied in the *Motor Carrier Act*.

BACKGROUND:

In February 1998, the Applicant applied to the Motor Carrier Commission for a Public Passenger licence with four certificates to operate regularly scheduled bus service over a number of routes radiating from Parksville, namely to Qualicum, Port Alberni, the Departure Bay ferry terminal and Nanaimo Harbour. Public hearings to consider the application were held in Parksville and Nanaimo in late August and early September, 1998. On October 30, 1998 the Commission granted the Applicant a licence and two certificates to operate scheduled bus service between Qualicum and the Departure Bay and Gabriola Island ferry terminals. Service was restricted to passengers originating at or destined to either of the ferry terminals. Mr. Morgan commenced operations and continues to operate the service under the name "New Shuttle".

In December of 1998, the Applicant applied for an alteration of its new licence and the addition of two certificates, with expanded authority to operate from Parksville north to Buckley Bay, from Parksville south to the Cassidy Airport, and from Horseshoe Bay to Whistler. On April 15, 1999 the Commission denied the application in its entirety. The decision followed an investigation by the Motor Carrier Department. No public hearing on the application was held. The decision appears to have been made primarily on a belief by the Commission that the routes applied for were adequately served by the existing scheduled carriers.

The Applicant subsequently applied for Leave for Reconsideration of that portion of the decision related to the Parksville-Buckley Bay route, which the Reconsideration Panel granted in August of 1999.

ISSUE

Was the Motor Carrier Commission's decision to reject the Applicant's second application (Application No. 3685/98) in its entirety consistent with the principles expressed or implied in the *Motor Carrier Act*?

The parties at the hearing were advised that because Leave for Reconsideration had been granted for reason of possible inconsistency between the original decision and the Act, the purpose of the hearing was to deal with argument about the appropriateness of the original decision, not the presentation of new evidence.

POINT OF PROCEDURE

Prior to commencing arguments, Mr. Tobin Robbins, Counsel for the objector, made arguments on a point of procedure. He submitted that the remarks of Saunders J. in Leo's Taxi Ltd. v. the Motor Carrier Commission, BCSC, 1996 with respect to section 54 (1) of the *Motor Carrier Act*, applied to the Panel. Specifically, as this was a reconsideration pursuant to section 54(1)(b), the Panel does not have jurisdiction to make fresh findings of fact or to hear new evidence.

Mr. Robins noted that although the British Columbia Court of Appeal found that it was inappropriate for Saunders, J's to rule on this issue, Esson, J.A. indicated that when a suitable case came before the Commission, he had no doubt that "it and its advisors will give respectful attention to the views expressed by Madam Justice Saunders".

APPLICANT'S SUBMISSION

The Applicant stated that it proposed to extend its existing service between Qualicum and Nanaimo north from Qualicum to Buckley Bay, which is the location of the Vancouver Island terminal of the ferry serving Denman Island and Hornby Island. The Applicant proposed to offer six round trips per day, which would be able to operate without any need for additional certificates. Many of the passengers now riding from Qualicum to Departure Bay actually originate north of Qualicum and had been given rides to the latter point to catch the bus. The Applicant believes that this was indicative that the area north of Qualicum offered a reasonable market for potential new business.

Mr. Morgan stated that statistics from B.C. Ferries indicate a steady rise in the number of foot passengers disembarking from ferries at the Departure Bay terminal. He said that Gray Line of Victoria Ltd. ("Gray Line") had not been successful in capitalizing on this growth in potential passenger market because it was not providing service adequately attractive to people, specifically retired people who constitute a large potion of the residents of the Parksville/Qualicum area. He said his "New Shuttle" operation provided a more personalized service that was being well received by his customers. He emphasized his belief that consumers should be allowed a choice of service.

Under questioning from the Panel, Mr. Morgan stated that he proposed to allow passengers on the Qualicum-Buckley Bay portion of the planned service to board or alight at any stop en route. The Panel noted that Mr. Morgan's present operating authority requires all passengers to originate from or be destined to the Departure Bay ferry terminal or the Gabriola Island ferry terminal in downtown Nanaimo. Mr. Morgan stated that he would like to be able to handle passengers for intermediate points, but he was prepared to accept a restriction from the Commission that passengers north of Qualicum had to originate at or be destined to the ferry terminal at Buckley Bay.

OBJECTOR'S SUBMISSIONS

Gray Line holds operating authority for scheduled bus service on most of Vancouver Island. Mr. Robbins presented the case for the Objector.

Mr. Robbins opened his presentation with a brief outline of Gray Line's operations, noting that the company has five basic services: scheduled passenger operations, parcel express, charter service, sight-seeing service and contract bus service. He stated that Gray Line's scheduled passenger service and parcel express services are currently operating at a loss and have to be cross-subsidized by profits from the other three operations.

The deregulation of freight service has brought many new entrants into the courier/express business, few of whom pay their employees the union wage scale that Gray Line pays its employees. This change has made the express business extremely price-sensitive and reduced both the rates and volumes the company previously enjoyed, to the point that parcel express service is no longer profitable for the company.

With respect to passenger ridership, Mr. Robbins presented evidence that ridership on the company's scheduled bus service had dropped significantly since 1991, and was now only about 75% of that of 1991 despite the reasonable growth in population on Vancouver Island during the intervening years. Although overall ridership has stabilized in the last year, on the route at issue (Parksville-Qualicum-Campbell River), he stated ridership was continuing to drop. Mr. Robbins believed this drop was reflective of the fact that the communities further north on Vancouver Island are more dependent on basic resources for their economic livelihood, and therefore these communities are suffering more acutely in the current economic downturn than the more diversified communities to the south. Gray Line currently provides four round trips per day on the section of route at issue.

Mr. Robbins stated his belief that the fundamental issue at stake in this hearing is the fact that the service proposed by the Applicant is essentially identical in character to that provided by Gray Line and current economic conditions do not support any duplication of service on what is already a weak corridor in a struggling industry. He said approval of the application could lead to a withdrawal of service in the area by Gray Line. He believed the Commission had made the correct decision in April and the Reconsideration panel should uphold that decision in its entirety.

Both Mr. Robbins and Mr. Morgan made a number of allegations and counter-allegations which the Panel did not consider vital to the issue before it, and so they have not been recorded in this judgement.

JUDGEMENT

The *Motor Carrier Act* requires all applicants for new or altered licence authority to demonstrate to the Commission "by substantial evidence" that there is a public need for the requested authority. The Commission has traditionally required a higher standard of evidence of need in cases dealing with applications for scheduled bus services than for charter bus services, because of the greater public interest at stake and because the Commission is well aware of the financial issues involved. The requirement to operate a vehicle on a published schedule, whether or not sufficient passengers or express are offered to make the trip remunerative, is an onerous financial risk for any carrier.

The Commission must balance this knowledge of the risks involved for the carrier with the knowledge that for those people without access to an automobile, because of financial limitation, age, disability or other reason, scheduled bus service may be their only transportation option to access basic necessities, such as groceries and medical care. For this reason the Commission has traditionally endeavoured to ensure that as large a percentage of the population as can be reasonably accommodated is provided with at least a basic level of bus service. The Commission has also been of the viewpoint that the public is best served by reasonable stability of routes, schedules and fares. For this reason the Commission has imposed a significant burden of evidence upon those seeking entry into, exit from or changes within the scheduled bus service industry.

The Reconsideration Panel believes that these policies of the Commission remain critical to the Commission's mandate to act in the interests of the public. Therefore, the Reconsideration Panel had first to consider the service level and viability of the existing operation. Gray Line of Victoria has operated bus service on the route in question for many years, and before that the route

was operated by Vancouver Island Coach Lines. In recent years the company has had to face several conditions which have served to reduce its revenue base:

1. The economic rece sion which has hit British Columbia for much of this decade has been most acute in those communities dependent upon resource industries. Although there is a high retired population in the Parksville/Qualicum area which is perhaps less sensitive to the recession, the area north of Qualicum has a much lower percentage of seniors. It is this area which must be considered in the matter at issue, not the Parksville/Qualicum area, which the Applicant already has licence authority to serve.
2. The recession has impacted low wage earners more acutely than higher wage earners, expanding the gap between the rich and the poor. Since lower income people traditionally are the biggest users of scheduled bus service, the recession has reduced customers in the bus business more dramatically than many other businesses.
3. B.C. Transit has recently expanded its public bus service on the Nanaimo/Parksville corridor. While this area is outside the section of route at issue, the addition of a highly subsidized carrier offering low fares in the region must have some negative impact on the revenues Gray Line receives for its Nanaimo-Campbell River corridor.
4. The deregulation of freight service has eroded the Objector's parcel express business, thereby reducing revenues.

Against these serious considerations, the Reconsideration Panel had to weigh the evidence of need for new service produced by Mr. Morgan. The original application contained 274 Certificates of Support, which by any assessment represents a very large number and is indicative of a most ambitious effort by the Applicant. However, most of the certificates state a requirement for taxi/limousine service, not bus service. Even accepting that some supporters may not be aware of the distinction between a taxi/limousine (personalized charter) and bus (fixed routing/individual fare), a detailed examination of the certificates shows that the trips the supporters envision taking would in most cases not be served by the proposed service. In conclusion, the Panel decided that fewer than 30 of the certificates represented genuine potential users. The Panel believed this was not sufficient to justify introduction of a new bus service which could potentially jeopardise the existing service.

While the Panel does not wish to disparage Mr. Morgan's obvious efforts to secure support for his proposed service, it is forced to judge the Certificates of Support somewhat skeptically. The Applicant has proposed to offer six round trips per day between Qualicum and Buckley Bay. The route is currently served by four round trips per day by Gray Line. The Reconsideration Panel has no doubt that if citizens of the area were polled as to whether they preferred ten trips per day over four trips per day, the vast majority of people would state they preferred ten trips. The Panel also believes that many people would say the expansion of bus service would help reduce air pollution and energy consumption, both laudable goals.

However, the Panel is also aware that the quantum leap from statements of support to actually putting passengers on the seats on the bus is a most difficult one, one for which bus executives throughout North America would gladly pay large sums of money to solve. Certainly many innovative attempts to increase bus ridership in the last decade have often produced disappointing results.

Mr. Robbins reviewed the Certificates of Support filed by the Applicant with the application and stated his belief that the certificates did not provide adequate evidence of need to justify the Reconsideration Panel overturning the Commission's earlier decision. The panel concluded that the chart Mr. Robbins presented relating to Gray Line ridership amounted to new evidence, which the Panel had stated in opening the hearing it would ignore. However, the chart mirrored evidence which Gray Line had previously provided the Commission, so the Panel accepted Mr. Robbins accompanying arguments even though it chose to disregard to the specific document.

Under the circumstances, the Reconsideration Panel believes that the four round trips per day offered by Gray Line is a realistic level of service for current and immediately foreseeable conditions.

At the Reconsideration hearing, counsel for Gray Line made statements and presented evidence that the company's scheduled passenger and parcel express service on Vancouver Island were losing money. The Panel accepted this position without challenge because it is aware that all scheduled bus operators in British Columbia have suffered in recent years because of the poor economic conditions prevailing in the Province and other factors. However, the Panel wishes to put Gray Line, and other scheduled carriers, on notice that in future applications before the Commission where scheduled carriers wish to base their case on the economic viability of their services, the Commission will require more substantial evidence, such as audited financial statements and route-specific data on costs, ridership and revenue.

ORDER

This Reconsideration Panel orders the Commission decision in respect to Application 3685/98 be upheld in its entirety.
THE PANEL FURTHER ORDERS that costs of this reconsideration hearing be and are hereby assessed against the Applicant and Objector and that the security deposits filed with the Panel be retained as payment for costs.
DATED at the City of Victoria, in the Province of British Columbia, this 19th day of January, 2000.

Order No. RE 4 - 00
File No. 12/99

BEFORE THE MOTOR CARRIER COMMISSION OF BRITISH COLUMBIA
RECONSIDERATION PANEL

IN THE MATTER OF THE MOTOR CARRIER ACT,
R.S.B.C. 1996, CHAPTER 315, AND MOTOR CARRIER
REGULATIONS, B.C. REG. 59/59, AND B.C. REG. 252/94
AS AMENDED;

AND

IN THE MATTER OF APPLICATION NO. 3415/98
INNOTEC ENTERPRISES LTD.

BEFORE: BARRIE SANFORD, COMMISSIONER)
PETER KNITTEL, COMMISSIONER) ON THE 9TH DAY
GAIL DAVIDSON, COMMISSIONER) OF DECEMBER, 1999

ORDER

UPON THE APPLICATION of Innotec Enterprises Inc. (the "Applicant") for alteration of their Limited Passenger License to amend Restriction No. 1 to allow a carrying capacity of not less than four (it is currently six) and not more than ten (it is currently nine), and to add three additional certificates, published as Application No. 3415/98, coming on for hearing before the Reconsideration Panel (the "Panel") on the 9th day of December, 1999 at Victoria, B.C.; and upon hearing from Edison Kahakauwila, Manager, and David Hendersen, Assistant, of the Applicant: and there being no objectors to the Reconsideration;

APPLICATION

The Applicant was granted Leave under s. 54(1)(b) of the Motor Carrier Act (the "Act") that there are probable grounds to believe that the decision may be inconsistent with the principles expressed or implied in the Act or the regulations.

BACKGROUND

The applicant is based in Victoria B.C. and at time of making application held Limited Passenger Authority, Limousine, with four certificates restricted to luxury Cadillac, Lincoln or Chrysler limousines with a carrying capacity of not less than six (6) passengers and not more than nine (9) passengers, exclusive of the driver.

The inspector's report for Application 3415/98 recommended granting both the alteration of the carrying capacity and the 3 additional certificates. There were 2 objectors to the original application, G. Elliott & Associates Consultants Ltd. and James Alan Lawson, both indicating they felt there were ample limousines in the Victoria area. The inspector concluded there was good support presented by the applicant, that the growth in their business warrants the increase in certificates, and that the passenger transportation industry is changing to require more sedans for use by individuals requesting understated luxury rather than limousines.

However, the application was not granted in full by the Commission, but limited (by way of an internal memo dated April 6, 1999 attached to the inspector's report) to granting the 3 additional certificates, and a more restrictive revision to Restriction 1 as follows:

"Service under this authority is restricted to the operation of luxury Cadillac, Lincoln or Chrysler limousines with a carrying capacity of not less than **six (6) passengers and not more than ten (10) passengers, exclusive of the driver.**

The Commission will also authorize the additional operation of one (1) 1998 Chrysler Intrepid, four (4) passenger, exclusive of the driver, while such vehicle is being operated under the authority of Clause No. 1 of this license only."

(Note the bold has been added here to highlight where the Restriction differs from that requested.) The reasons for the tighter restrictions were not obvious from either the memo or the documents it refers to.

The Applicant subsequently applied for Leave for Reconsideration of the decision, which the Reconsideration Panel granted in November of 1999.

ISSUE

Was the Motor Carrier Commission's decision to only grant the application in part inconsistent with the principles expressed or implied in the Act?

The parties at the hearing were advised that because Leave for Reconsideration had been granted for reason of possible inconsistency between the original decision and the Act, the purpose of the hearing was to deal with argument about the appropriateness of the original decision, not the presentation of new evidence.

APPLICANT'S SUBMISSION

Mr. Kahakauwila and Mr. Henderson appeared before the Panel. They expressed their frustration at having been told over the phone by the department that the application had been "granted in full". This led them to assume the memo attached to the MC 31 when they subsequently received it was likely an internal document attached by mistake, until they received a follow up call about one month later indicating that the information they had been given verbally had been "made in error" and their application was only granted in part.

They submit that the restrictions as laid out in the memo are too restrictive and that they see no reason why they needed to be added. The number of sedan style vehicles being limited to "one" is too restrictive as they feel to be viable in the long run they have to have at least 2 similar vehicles in each category to meet most customer expectations, especially repeat customers. Similarly, the make and model restrictions are unlike any they have seen for other limousine companies and would result in them applying for a change to their license every time they wanted to update a vehicle. They feel this is particularly cumbersome given that the sedan market is very particular to newer model cars.

JUDGEMENT

The Reconsideration Panel considered the Commission's position of refusal in light of the original investigation and the points presented by the Applicant, and made the following determinations:

1. Limiting the use of the certificates to only one sedan style vehicle does not seem to serve the public interest better than letting the decision around certificate allocation be based on the company's response to market demands. None of the original information indicates unusual competitive or market circumstances that would warrant this being controlled by the Motor Carrier Commission rather than the business operator.

2. Restricting the make, model and year of the sedan style vehicle is in excess of the restrictions commonly put on luxury limousine operators, and again does not appear to better serve public interest. The original information does not support the need to limit the use of one certificate to only one make and model of car, nor further, to only one particular year of that model.

ORDER

THE RECONSIDERATION PANEL ORDERS that the Applicant be granted the three (3) additional certificates as requested, and that Restriction 1 be altered to read:

"1. Service under this authority is restricted to the operation of a four door luxury vehicle (Cadillac, Lincoln, or Chrysler) with a carrying capacity of not less than four (4) passengers and not more than ten (10) passengers, exclusive of driver."

THIS PANEL FURTHER ORDERS that costs of this Reconsideration Hearing be and are hereby assessed against the Applicant in the amount of $150, being the like amount posted as security for costs.

DATED at the City of Victoria in the Province of British Columbia, this 21st day of January, 2000.